

MEMO# 25570

October 19, 2011

Draft Comment Letter on Proposed Rulemaking on Treatment of Asset-Backed Issuers; Comments Requested by October 25

[25570]

October 19, 2011

TO: FIXED-INCOME ADVISORY COMMITTEE No. 75-11

SEC RULES COMMITTEE No. 87-11

SMALL FUNDS COMMITTEE No. 41-11

CLOSED-END INVESTMENT COMPANY COMMITTEE No. 47-11 RE: DRAFT COMMENT LETTER ON PROPOSED RULEMAKING ON TREATMENT OF ASSET-BACKED ISSUERS; COMMENTS REQUESTED BY OCTOBER 25

At the end of August, the Securities and Exchange Commission (the "Commission") issued an advance notice of proposed rulemaking ("ANPR") proposing amendments to Rule 3a-7 under the Investment Company Act of 1940 (the "Investment Company Act"), a rule that provides certain asset-backed issuers with a conditional exclusion from the definition of investment company. [*](#) Comments on the ANPR are due November 7, 2011.

Our draft comment letter is attached. The letter recommends that the Commission bear in mind the following principles, in considering any potential new conditions under Rule 3a-7:

- Any new conditions, in addition to addressing investor protection concerns under the Investment Company Act, should be related closely to Rule 3a-7's purpose of distinguishing those ABS issuers that rely on the rule from registered investment companies.
- If the Commission is considering adding new conditions that are drawn from rules already applicable to ABS issuers, it should ensure that those conditions would not be duplicative of, and are consistent with, requirements that already are applicable to ABS. It also should ensure that applying those conditions would not result in unintended consequences in the ABS markets, including regulatory arbitrage.
- The Commission should take a holistic view of the potential implications for the ABS markets and investors of any new or revised conditions it may consider, not just under Rule 3a-7, but also in combination with any potential changes to Section 3(c)(5)(C) of the Investment Company Act.

In addition, the letter raises a concern about the implications for registered investment companies if the Commission were to adopt an interpretation in which it deems a Rule 3a-7 issuer to be an “investment company” as defined in the Investment Company Act, as such an interpretation could unintentionally and unnecessarily limit registered investment companies’ investments in ABS. The letter also recommends that the Commission not amend Rule 3a-7 to provide that a Rule 3a-7 issuer is an “investment company” for purposes of the definition of “eligible portfolio company” in the Investment Company Act.

Please provide all comments on the draft letter to me in writing (sarah.bessin@ici.org) by Tuesday, October 25.

Sarah A. Bessin
Senior Counsel

[Attachment](#)

endnotes

* See ICI Memorandum No. 25482 (Sept. 13, 2011), available at http://www.ici.org/my_ici/memorandum/memo25482.

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